



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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July 20, 1998

MEMORANDUM

TO: The Commission

FROM: Lawrence M. Noble
General Counsel

Kim Bright-Coleman
Associate General Counsel

SUBJECT: MURs 4407 and 4544 - Negotiation of Stipulations

I. INTRODUCTION

On February 10, 1998, the Commission in MURs 4407 and 4544 found reason to believe that the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer ("Primary Committee"), the Clinton/Gore '96 General Committee, Inc., and Joan Pollitt, as treasurer ("General Committee"), President William J. Clinton, Vice President Albert Gore, Jr., and the Democratic National Committee, and Carol Pensky, as treasurer ("DNC") violated statutes and regulations over which it has jurisdiction, and opened an investigation. *See* 2 U.S.C. § 437g(a)(2); 11 C.F.R. § 111.10. The Commission also authorized certain discovery, including the issuance of subpoenas to produce documents and orders to submit written answers to respondents President Clinton and Vice President Gore, and to non-respondent witnesses Erskine Bowles, Harold Ickes, William Knapp, Peter Knight, Terrence McAuliffe, Leon Panetta, Marius Penczner, Mark Penn, Douglas Schoen, Hank Sheinkopf, Doug Sosnik, Robert Squier, Betsy Steinberg, and George Stephanopoulos, and the issuance of subpoenas to produce documents to respondents the Primary Committee, the General Committee and the DNC, and to non-respondent witnesses the November 5 Group, Inc., Squier Knapp Ochs Communications, Inc., and the Executive Office of the President. These subpoenas and orders have been issued and served.

In the First General Counsel's Report in these MURs, this Office indicated that it was "exploring whether the burdens of discovery may be reduced, and the case may be processed more quickly, through the use of admissions by the respondents in connection with facts which the respondents do not contest." MURs 4407 and 4544, First General Counsel's Report at 43. On July 10, 1998, attorneys from this Office met with Lyn Utrecht, Esquire and Eric Kleinfeld, Esquire, counsel for respondents President Clinton, Vice President Gore, the Primary Committee

and the General Committee, and for non-respondent witnesses Harold Ickes, William Knapp, Peter Knight, Terrence McAuliffe, Leon Panetta, Marius Penczner, Mark Penn, Douglas Schoen, Hank Sheinkopf, Doug Sosnik, Robert Squier, Betsy Steinberg, George Stephanopoulos, the November 5 Group, Inc., and Squier Knapp Ochs Communications, Inc., to discuss whether it may be possible to negotiate a set of stipulations which would be binding in these MURs and in any subsequent civil action arising from these MURs.

The meeting was productive, and Ms. Utrecht indicated that, in addition to her clients, respondent DNC and non-respondent witnesses Erskine Bowles and the Executive Office of the President would like to be included in negotiations. Counsel for the DNC and the Executive Office have confirmed their desire to participate in the endeavor, and we anticipate receiving such confirmation from Mr. Bowles' counsel.

However, the respondents and the participating witnesses are willing to engage in further efforts to develop a factual record through the use of stipulations only if they are relieved from the burden of responding to pending subpoenas and orders in these MURs, while negotiations are ongoing. The respondents are prepared to toll the limitations period for a civil action arising from the issues in these MURs during the period of time when discovery is stayed.¹

II. DISCUSSION

This Office recommends that the Commission stay discovery while this Office and the respondents attempt to negotiate a set of stipulated facts, in exchange for the respondents' agreement to toll the limitations period. If successful, the parties would draft a joint set of stipulations which, upon approval by the respondents and upon an affirmative vote of the Commission, would constitute an agreed record upon which the Commission could rely in determining whether or not there is probable cause to believe that a violation of a statute or regulation over which it has jurisdiction has occurred, and which would be binding in any subsequent legal proceeding arising from these matters.

Such stipulations would reduce the burdens of responding to discovery in these MURs, reduce the probability of the Commission having to institute a civil action to enforce its subpoenas, and expedite the development of a factual record.² The risk associated with engaging

¹ The participation of non-respondent witnesses is not required, and the Commission and the respondents could enter into binding stipulations without the participation or consent of non-respondent witnesses. Likewise, consent of the non-respondent witnesses is not required to toll the limitations period. However, some non-respondent witnesses are willing to voluntarily provide information needed for the stipulations, and should be included in the stay of discovery.

This Office notes that there are other witnesses who have received, and have responded to, the Commission's subpoenas. These witnesses are the Florida Democratic Party, Dick Morris and Marsha Scott. These witnesses have not been included in the negotiations to enter into binding stipulations.

² The Commission, the respondents and the participating witnesses all recognize that it may only be possible to stipulate to some of the facts relevant in these matters, and that the result of these negotiations may be a set of stipulations which limits, but does not eliminate, the need for further discovery. For example, this Office may need

in these negotiations is that the parties will not be able to reach an agreement as to a set of stipulated facts, and the stay of discovery will have delayed the investigation in these matters. The proposed agreement partially mitigates the danger of delay by tolling the limitations period for any civil action arising from these MURs, commenced pursuant to 2 U.S.C. § 437g(a)(6), during the same period of time when discovery is stayed. In addition, the parties have agreed that the agreement to stay discovery and toll the limitations period should be subject to termination, and the formal proposal (which this Office is preparing) sets forth that the agreement may be terminated by any party on five days written notice. Thus, if it appears that negotiations are not proceeding satisfactorily, the Commission may terminate the agreement, and the respondents and the participating non-respondent witnesses would be required to comply with the Commission's subpoenas.³ Finally, the initial negotiation period, during which discovery is stayed and the limitations period is tolled, is from July 10, 1998 to August 7, 1998. Renewal of negotiations will be contingent on the parties making satisfactory progress in the negotiations.⁴

III. RECOMMENDATIONS

1. Authorize the Office of the General Counsel to enter into negotiations with respondents the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer, the Clinton/Gore '96 General Committee, Inc., and Joan Pollitt, as treasurer, President William J. Clinton, Vice President Albert Gore, Jr., and the Democratic National Committee, and Carol Pensky, as treasurer, to draft stipulations which will be binding in MURs 4407 and 4544 and in any subsequent civil action arising from these MURs;

2. Stay the subpoenas and orders issued to respondents the Clinton/Gore '96 Primary Committee, Inc., and Joan Pollitt, as treasurer, the Clinton/Gore '96 General Committee, Inc., and Joan Pollitt, as treasurer, President William J. Clinton, Vice President Albert Gore, Jr., and the Democratic National Committee, and Carol Pensky, as treasurer, and to non-respondent witnesses Erskine Bowles, Harold Ickes, William Knapp, Peter Knight, Terrence McAuliffe, Leon Panetta, Marius Penczner, Mark Penn, Douglas Schoen, Hank Sheinkopf, Doug Sosnik, Robert Squier, Betsy Steinberg, George Stephanopoulos, the November 5 Group, Inc., Squier Knapp Ochs Communications, Inc., and the Executive Office of the President in MURs 4407 and 4544, and agree to stay the issuance of any further discovery to them, while such negotiations are ongoing, contingent on the respondents agreeing to toll the limitations period for a civil action arising from the MURs during the same period of time;

to take the deposition of Dick Morris, whose book *Behind the Oval Office* sets forth an account of facts which are relevant in these matters.

³ This Office notes that, to facilitate the preparation of the stipulations, the DNC has agreed to voluntarily produce certain documents within the scope of the subpoena issued to it, notwithstanding the proposed stay of discovery.

⁴ The recommendations include a recommendation that this Office be authorized to renew the agreement to stay discovery and toll the limitations period while negotiations are progressing. However, this Office would terminate the agreement only if authorized by the Commission to do so. If authorized to conduct these negotiations, this Office will provide periodic progress reports to the Commission.

3. Authorize the Office of General Counsel to renew the agreement to stay discovery and toll the limitations period while negotiations are progressing; and

4. Approve the appropriate letters.

Staff Assigned: Joel J. Roessner
Delanie DeWitt Painter
Andre G. Pineda
Delbert K. Rigsby

Attorneys